GIGANTOSAURUS RESOURCES, INC.

IBLA 82-455 Decided January 10, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer NM 44660.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

APPEARANCES: William J. Sullivan, Esq., Albuquerque, New Mexico, for appellant; Gayle E. Manges, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Gigantosaurus Resources, Inc., has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 2, 1982, rejecting its noncompetitive over-the-counter oil and gas lease offer, NM 44660.

On March 4, 1981, appellant filed its noncompetitive oil and gas lease offer for 2,240 acres of land situated in T. 12 N., R. 33 E., New Mexico

principal meridian, Quay County, New Mexico, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). 1/ In addition to filing its lease offer, appellant submitted $2,240 as the first year's advance rental payment. In its February 1982 decision, BLM rejected appellant's lease offer because the land applied for actually comprised 2,719.58 acres and, at $1 per acre, the first year's advance rental payment was deficient by more than 10 percent.

In its statement of reasons for appeal, appellant contends that the total acreage of the land applied for, 2,240 acres, was given to appellant by "representatives of the BLM" and that "in equity" the lease offer should be accepted. Appellant states that it stands ready to make up the difference in the rental owed, $479.58.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected where the offeror fails to tender the full first year's advance rental with his offer, as required by 43 CFR 3103.3-1, and the amount of rental tendered is deficient by more than 10 percent of the proper amount due. See, e.g., James M. Chudnow, 62 IBLA 19 (1982). In the present case, appellant's remittance was deficient by more than 10 percent. Accordingly, BLM properly rejected appellant's lease offer.

Appellant will not be excused from payment of the full rental based on his asserted reliance on statements by unknown BLM employees. 2/ Even assuming such statements were made, appellant cannot invoke the doctrine of equitable estoppel enunciated in United States v. Georgia-Pacific Corp., 421 F.2d 92 (9th Cir. 1970), where an essential factor, ignorance of the true facts, is lacking. The applicable regulation, 43 CFR 3103.3-1, provides that where an offeror does not know the total acreage requested in his lease offer, the rental payment shall be based on "40 acres for each smallest legal subdivision." Accordingly, if appellant did not know the total acreage included in its lease offer, it will be deemed to have known that its rental payment should have been calculated on the basis of 40 acres for each smallest legal subdivision. As such, the rental payment should have been $2,720. In any case, appellant is deemed to have known the actual total acreage included in its lease offer where the status plat for T. 12 N., R. 33 E., New Mexico principal meridian, Quay County, New Mexico, was a matter of public record.

1/ The land requested by appellant in its lease offer was described as follows:

"Section 25: NW/1/4, NE/1/4, SE/1/4,
Section 26: All
Section 27: All
Section 28: E/1/2 SE/1/4,
Section 30: NE/1/4,
Section 31: W/1/2 NW/1/4,
Section 34: All"

2/ Without more information, we cannot conclude that the actions of the BLM employees rose to the level of "affirmative misconduct," as required by United States v. Ruby Co., 558 F.2d 697, 703 (9th Cir. 1978), for the invocation of the doctrine of equitable estoppel.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
James L. Burski
Administrative Judge

We concur:

_____
C. Randall Grant, Jr.
Administrative Judge

_____
Edward W. Stuebing
Administrative Judge